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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,070	01/18/2006	Syoji Shirai	IPA010	3915
33628 7590 07/15/2009 KANESAKA BERNER AND PARTNERS LLP 1700 DIAGONAL RD SUITE 310 ALEXANDRIA, VA 22314-2848				
EXAMINER SUTTON, ANDREW W				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
07/15/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/565,070

**Applicant(s)**

SHIRAI ET AL.

**Examiner**

ANDREW W. SUTTON

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-15 and 19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11-15 and 19 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/30/09 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 1/12/09 have been fully considered but they are not persuasive. The applicant argues that the amendment overcomes the 112 rejection made in the previous action. The examiner disagrees as the applicant claims the top end of the visor being located inside the hat body without a top portion extending inwardly. As stated in the previous action, Fig. 2 of the applicant's drawings clearly show the top portion of the visor extending inwardly.

As to the 103, the applicant argues that the visor portion h of Tanizawa does not have a top end because the main portion 1 is integrally formed with the cover 2. The examiner disagrees as previously stated, the visor portion h has a top portion located below the portion 1a. The applicant further argues that the openings 1b are forming inside the visor h and not between the visor portion and the eave portion. The examiner

Art Unit: 3765

disagrees as the openings 1b are above the visor portion h vertically and below the eave portion 2a therefore meeting the claim limitation.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-15 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims the top end of the visor being inside the hat body without a portion extending inwardly from the top portion. The applicant clearly shows in Fig. 2 of the drawings the top portion at 12a extending inwardly. It is unclear to the examiner what the applicant is trying to claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanizawa (JP2001-003220) in view of Grilliot (US 5,090,054). Tanizawa teaches a hat body having a top portion H having a rear end 1, a front eave portion h extending from the top portion and having a lower end, a back portion 1 extending from the top

Art Unit: 3765

portion H with the upper portion 1f of the back portion 1 being located inside the rear end of the top portion with a space between to form a hole 1e. Tanizawa further teaches a visor portion h having a front end outside the body and a top end, just below 1c location, that is inside the hat body with an upper surface extending toward the top end, the top end being laterally disposed away from the lower end and vertically above the lower end at 2a to form a vent hole. The device further includes the top and front eave portion having a smooth inner surface to allow air to smoothly pass from the front air hole to the rear. Tanizawa does not teach the upper surface of the visor (just below 1c) being curved. Grilliot teaches a helmet with a vent 40 and a curved inner surface at 4. It would have been obvious to one of ordinary skill in the art to modify the device of Tanizawa with that of Grilliot to provide a curved inner surface to provide a smooth passage for air to travel.

As to claim 12, the hat H has sides and at the lower end of the sides is an eave portion with the eave and the upper surface of the visor h forming an opening at 2b.

As to claim 13, the openings 1b are above the visor portion h vertically and below the eave portion 2a therefore meeting the claim limitation. The rest of the limitations are addressed above.

As to claims 14, the applicant states no criticality or unexpected results to the width of the hole being the same as the width of the visor. It would have been obvious to one of ordinary skill in the art to modify the hole of Tanizawa to provide it being the same width as the visor through routine experimentation.

As to claim 15, the air hole 2b has a width less than the visor h.

As to claim 19, the hat H and visor h are formed integrally as claimed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
13 July 2009

/Shaun R Hurley/  
Primary Examiner, Art Unit 3765